

holding company which purchased the stock issued in connection with such qualified stock issuance, and shall apply only when the OTS has determined that such service is consistent with the purposes of the Interlocks Act and the Home Owners' Loan Act.

**§ 563f.5 Regulatory Standards exemption.**

(a) *Criteria.* The OTS may permit an interlock that otherwise would be prohibited by the Interlocks Act and § 563f.3 if:

(1) The board of directors of the depository organization (or the organizers of a depository organization being formed) that seeks the exemption provides a resolution to the OTS certifying that the organization, after the exercise of reasonable efforts, is unable to locate any other candidate from the community or RMSA, as appropriate, who:

(i) Possesses the level of expertise required by the depository organization and who is not prohibited from service by the Interlocks Act; and

(ii) Is willing to serve as a management official; and

(2) The OTS, after reviewing an application submitted by the depository organization seeking the exemption, determines that:

(i) The management official is critical to the safe and sound operations of the affected depository organization; and

(ii) Service by the management official will not produce an anticompetitive effect with respect to the depository organization.

(b) *Presumptions.* The OTS applies the following presumptions when reviewing any application for a Regulatory Standards exemption:

(1) An interlock will not have an anticompetitive effect if it involves depository organizations that, if merged, would not cause the post-merger Herfindahl-Hirschman Index (HHI) to exceed 1800 and would not cause the HHI to increase by more than 200 points. This presumption shall not apply to depository organizations subject to the Major Assets prohibition of § 563f.3(c).

(2) A proposed management official is critical to the safe and sound operations of a depository institution if:

(i) That official is permitted by OTS to serve as a director or senior executive officer of that institution pursuant to § 563.585 of this chapter; and

(ii) The institution had operated for less than two years, was not in compliance with minimum capital requirements, or otherwise was in "troubled condition" as defined in § 563.555 of this chapter at the time the service under § 563.585 of this chapter was permitted.

(c) *Duration of interlock.* An interlock permitted under this section may continue until the OTS notifies the affected depository organizations otherwise. The OTS may require termination of any interlock permitted under this section if the OTS concludes, after giving the affected persons the opportunity to respond, that the determinations under paragraph (a)(2) of this section no longer may be made. A management official may continue serving the depository organization involved in the interlock for a period of 15 months following the date of the order to terminate the interlock, unless the order terminating the interlock provides otherwise.

[61 FR 40308, Aug. 2, 1996, as amended at 63 FR 51275, Sept. 25, 1998]

**§ 563f.6 Management Consignment exemption.**

(a) *Criteria.* The OTS may permit an interlock that otherwise would be prohibited by the Interlocks Act and § 563f.3 if the OTS, after reviewing an application submitted by the depository organization seeking an exemption, determines that the interlock would:

(1) Improve the provision of credit to low- and moderate-income areas;

(2) Increase the competitive position of a minority- or women-owned depository organization;

(3) Strengthen the management of a depository institution that has been chartered for less than three years at the time an application is filed under this part; or

(4) Strengthen the management of a depository institution that is in an unsafe or unsound condition as determined by the OTS on a case-by-case basis.

(b) *Presumptions.* The OTS applies the following presumptions when reviewing any application for a Management Consignment exemption:

(1) A proposed management official is capable of strengthening the management of a depository institution described in paragraph (a)(3) of this section if that official is permitted by the OTS to serve as a director or senior executive officer of that institution pursuant to §563.585 of this chapter and the institution had operated for less than two years at the time the service under §563.585 of this chapter was permitted; and

(2) A proposed management official is capable of strengthening the management of a depository institution described in paragraph (a)(4) of this section if that official is permitted by the OTS to serve as a director or senior executive officer of that institution pursuant to §563.585 of this chapter and the institution was not in compliance with minimum capital requirements or otherwise was in “troubled condition” as defined under §563.555 of this chapter at the time service under §563.585 of this chapter was permitted.

(c) *Duration of interlock.* An interlock granted under this section may continue for a period of two years from the date of approval. The OTS may extend this period for one additional two-year period if the depository organization applies for an extension at least 30 days before the current exemption expires and satisfies one of the criteria specified in paragraph (a) of this section. The provisions set forth in paragraph (b) of this section also apply to applications for extensions.

[61 FR 40308, Aug. 2, 1996, as amended at 63 FR 51275, Sept. 25, 1998]

#### **§ 563f.7 Change in circumstances.**

(a) *Termination.* A management official shall terminate his or her service or apply for an exemption to the Interlocks Act if a change in circumstances causes the service to become prohibited under that Act. A change in circumstances may include, but is not

limited to, an increase in asset size of an organization, a change in the delinquency of the RMSA or community, the establishment of an office, an acquisition, a merger, a consolidation, or any reorganization of the ownership structure of a depository organization that causes a previously permissible interlock to become prohibited.

(b) *Transition period.* A management official described in paragraph (a) of this section may continue to serve the depository organization involved in the interlock for 15 months following the date of the change in circumstances. The OTS may shorten this period under appropriate circumstances.

#### **§ 563f.8 Enforcement.**

Except as provided in this section, the OTS administers and enforces the Interlocks Act with respect to savings associations, savings and loan holding companies, and affiliates of either, and may refer any case of a prohibited interlocking relationship involving these entities to the Attorney General of the United States to enforce compliance with the Interlocks Act and this part. If an affiliate of a savings association or savings and loan holding company is subject to the primary regulation of another Federal depository organization supervisory agency, then the OTS does not administer and enforce the Interlocks Act with respect to that affiliate.

#### **§ 563f.9 Interlocking relationships permitted pursuant to Federal Deposit Insurance Act.**

A management official or prospective management official of a depository organization may enter into an otherwise prohibited interlocking relationship with another depository organization for a period of up to 10 years if such relationship is approved by the Federal Deposit Insurance Corporation pursuant to section 13(k)(1)(A)(v) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1823(k)(1)(A)(v)).

### **PART 563g—SECURITIES OFFERINGS**

Sec.

563g.1 Definitions.

563g.2 Offering circular requirement.

563g.3 Exemptions.